Manslaughter: Code s 303

In order for the prosecution to prove the charge of manslaughter, it must establish that the defendant killed the deceased and that he did so unlawfully. Unlawful simply means not authorised, justified or excused by law.¹

Significantly, it is not an element of the offence that the defendant intended to kill the deceased or to do the deceased any particular harm. So it is sufficient if the prosecution proves that the accused unlawfully killed the deceased.

Any person who causes the death of another, directly or indirectly and by any means whatever, is deemed to have killed that other person: s 293.²

In that regard it does not matter that the death did not immediately result. If the actions of the defendant led to injury to the deceased which in the ordinary course resulted in his death, then in law the defendant is responsible for that death, even though it occurred some days after these actions.

The actions of the defendant need not have been the only contributing cause of death. However, the defendant’s acts must be a substantial or significant cause of death or have contributed substantially to the death.³

In law, a killing is excused if an ordinary person in the position of the defendant would not have foreseen the death of the deceased as a possible outcome of his act⁴ (e.g. in pushing the deceased).

Murder/Manslaughter: Elements of the Offence and Standard Defences

The jury might benefit if asked the following questions: (as largely suggested by Dutney J).

1. Did A kill B?
   (a) If “no” to question 1, A is not guilty of any offence;
   (b) If “yes” to question 1, go to question 2.

2. Has the prosecution proved that A was not acting in self-defence?

¹ See directions on accident, self defence and other possible defences such as the defence of a dwelling house.
² See also directions on criminal negligence.
⁴ See directions on accident.

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(a) If “no” to question 2, A is not guilty of any offence;
(b) If “yes” to question 2, go to question 3.

3. When he killed B, did A intend to kill him or cause him grievous bodily harm?
   (a) If “no” to question 3, A is not guilty of murder but guilty of manslaughter;
   (b) If “yes” to question 3, go to question 4.

4. Has the prosecution proved that A was not provoked by B?
   (a) If “no” to question 4, A is not guilty of murder but guilty of manslaughter.
   (b) If “yes” to question 4, go to question 5.

5. Has A provided (on the balance of probabilities) a defence of diminished responsibility?
   (a) If “no” to question 5, A is guilty of murder;
   (b) If “yes” to question 5, A is guilty of manslaughter.